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In the Supreme Court

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United States

OCTOBER TERM, 1979

No. 79-423

JEANINE R. SMITH,
Petitioner,
vs.
PATRICIA ROBERTS HARRIS, SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

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The subject of the petition for writ of certiorari in this case is whether the posthumous payment of underpaid Supplemental Security Income (SSI) benefits to the representative payee of a deceased eligible beneficiary as reimbursement for the provision of necessities of life on a credit basis, is proper pursuant to Section 1631 of the Social Security Act (Act), 42 U.S.C. § 1383. In opposing the petition, the Secretary of Health, Education and Welfare (HEW) states that a reading of the Act itself, and of its legislative history, indicates that the Secretary correctly denied payment of these benefits. More-

over, the Secretary argues that this is a question more appropriate for Congress than for the courts, because the particular method of payment advocated by the petitioner would fulfill an "additional purpose" not already within the spirit or letter of the law.

There is no need for congressional intervention in this matter. Congress has already spoken by establishing a program to provide the necessities of life to the needy aged, blind and disabled. Neither the Act itself, nor its legislative history, nor the overall policy behind the Act precludes the method of payment advocated by the petitioner. Petitioner does not wish to extend this statute beyond its congressionally intended bounds, but instead challenges the Secretary's interpretation of the statute in a manner which runs contrary to the language, purpose and intent of the Act.

The Secretary correctly asserts that the interpretation of a statute "by those charged with its execution should be followed *unless there are compelling indications that it is wrong." E.I. du Pont de Nemours & Co. v. Collins,* 432 U.S. 46, 54-55 (1977) (emphasis added). Although deference to the interpretation of the appropriate government agency is proper, statutory construction is ultimately a judicial function. *Austasia Intermodal Lines, Ltd. v. Federal Maritime Comm'n.,* 580 F.2d 642, 644 (D.C. Cir. 1978), citing *FTC v. Colgate-Palmolive Co.,* 380 U.S. 374, 385 (1965). Moreover, this Court has recently held that "[a]lthough an agency's interpretation of the statute under which it operates is entitled to some deference, 'this deference is constrained by our obligation to honor the clear meaning of a statute, as revealed by its language, purpose and history.'" *Southeastern Community College v. Davis,* 99 S.Ct. 2361, 2369 (1979). The petitioner asserts that the Secretary's interpretation in this instance is incorrect, and accordingly should not be followed. The Secretary's interpretation of the statute, by precluding the retroactive payment of then-current benefits to representative payees as reimbursement, while allowing such payment to beneficiaries themselves and to eligible spouses of

deceased beneficiaries, runs counter to the express wording and the overall policy of the Act to provide for the current needs of eligible beneficiaries.

Although Congress did not squarely address the particular question before this Court in a specific clause or section of the Act, or in the legislative history of the Act, it is clear from a common sense reading of the statute, in light of its overall policy, that the position advocated by the petitioner is proper, and will "best effectuate the purposes" of the program. 42 U.S.C. § 1383(a)(1). This Court has held that "where [a] statute's language seem(s) insufficiently precise, the 'natural way' to draw the line 'is in light of the statutory purpose'". *United States v. An Article of Drug ... Bacto-Unidisk ...,* 394 U.S. 784, 799, *rehearing denied* 395 U.S 954 (1969). In these instances, "the court must discern the applicable legislative intent by ... starting from the area where the legislative intent is readily discernible, and projecting to fair and reasonable corollaries of that intent for the specific issue ..." *Montana Power Co. v. Federal Power Comm'n.,* 445 F.2d 739, 746 (D.C. Cir. 1970), *cert. denied* 400 U.S. 1013 (1971). Moreover, a statute should not be interpreted "so narrowly as to defeat its obvious intent," *United States v. Braverman,* 373 U.S. 405, 408 (1963), or in a manner "which produce(s) absurd or nugatory results." *In re United States,* 563 F.2d 637, 642 (4th Cir. 1977).

As more fully explained by Judge Merrill of the Ninth Circuit in his dissenting opinion below (Petition at A-12 to A-14) the opinion of the majority of the Court of Appeals incorrectly embraces the inconsistencies in the Secretary's interpretation and application of the Act. Judge Merrill correctly asserted that neither the Act, nor its legislative history, nor the Secretary's regulations would preclude payment of benefits in the manner sought. In fact, he observed that the practice of the Secretary in some instances has been to allow underpayments to representative payees. Judge Merrill, in examining whether the Secretary's position " ... can be said to satisfy the general congressional policy underlying the act[,] ... would say no." (Petition at A-14).

CONCLUSION

This case presents issues which affect the very lifeblood of millions of needy Supplemental Security Income beneficiaries. The decision of the Secretary and the courts below will have devastating consequences for those beneficiaries who must attempt to rely on credit arrangements to obtain the necessities of life while awaiting the lengthy process of SSI eligibility determination. Neither the Social Security Act nor its legislative history precludes the type of payments sought by the petitioners. Moreover, the regulations of the Secretary, to the extent that they preclude these payments, are invalid. For these reasons, and for the reasons set forth in the petitioner's brief, the petition for writ of certiorari should be granted.

Respectfully submitted,

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